

Serial No. 09/760,949
Filed: January 16, 2001

REMARKS

Claims 1-13 were pending in the subject application.

Claims 1-12 are allowed.

Claim 13 stands rejected.

Claim 13 is amended.

Claim 13 is amended to adopt the Examiner's suggestion of replacing "and/or" with simply "or". It is Applicants' position that such an amendment is not deemed as narrowing with respect to any claim element. No new matter is added.

Informalities

The Examiner objects to the disclosure since Figures 9-11 have no brief description. Applicants have deleted Figures 9-11 and, therefore, have rendered the present objection moot. Reconsideration and withdrawal of the objection to the disclosure is respectfully requested.

Claim Rejection - 35 USC 112

Claim 13 stands rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. More specifically, the Examiner deems claim 13 indefinite since it lacks essential steps in the method of prophylactic or therapeutic treatment of mycoses. Moreover, the Examiner rejects claim 13 as the term "and/or" renders the claim indefinite.

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Claim 13 has been amended to substitute the word "or" for the originally filed term "and/or", as per the Examiner's helpful suggestion. Applicants respectfully traverse the Examiner's position that claim 13 lacks essential steps and is therefore indefinite.

A claim which omits matter disclosed to be essential to the invention as described in the specification or in other statements of record may be rejected under 35 USC 112, first paragraph, as not enabling. Additionally, a claim which fails to interrelate essential elements of the invention as defined by applicant(s) in the specification may be rejected under 35 USC 112, second paragraph. MPEP 2172.01. However, in the present case, the method of administration and the outcome of the treatment have not been deemed essential by the Applicant. Beginning at page 20, Applicants disclose a variety of possible methods of administration, none of which have been labeled as essential. Furthermore, the specific outcome of the treatment is also not deemed essential by the Applicants. Claim 13 is drawn to a method of prophylactic or therapeutic treatment of mycoses. The outcome, as the claim preamble clearly recites, is the prophylactic or therapeutic treatment of mycoses. No further information should be required of the claim to render it enabling and/or definite with respect to the outcome of the treatment.

Features that are merely preferred are not considered essential. Limiting an applicant to the preferred materials in the absence of limiting prior art would not serve the constitutional purpose of promoting the progress in the useful arts. See MPEP 2164.08(c).

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For these reasons, Applicants respectfully submit that claim 13 is definite, as amended. Reconsideration and withdrawal of the rejection of claim 13 under 35 USC 112, second paragraph, is requested.

Conclusion

Applicants thank Examiner Kam for the indication of allowed subject matter in claims 1-12. Applicants respectfully submit claim 13 is now in condition for allowance.

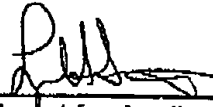
In summary, Applicants respectfully submit that the instant application is in condition for allowance. Early notice to that end is earnestly solicited.

If a telephone conference would be of assistance in furthering prosecution of the subject application, applicants request that the undersigned be contacted at the number below.

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No fee is required in connection with the filing of this Amendment. If any additional fees are deemed necessary, authorization is given to charge the amount of any such fee to Deposit Account No. 08-2525.

Respectfully submitted,



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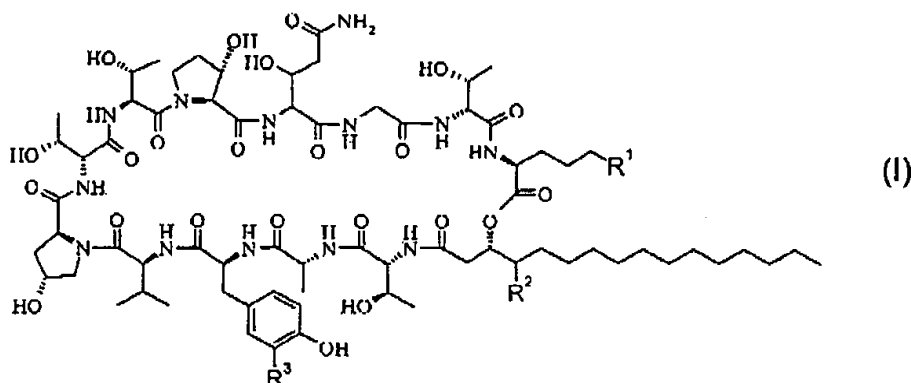
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VERSION SHOWING CHANGES MADE

Claim 13 was amended as shown below.

13. (Once Amended) A method for the prophylactic [and/or] or therapeutic treatment of mycoses which comprises administering to a human being or an animal an effective amount of the compound of the formula



wherein

R¹ is N-(3-aminopropyl)-N-[(2S)-2,5-diaminovaleryl]amino, N-(3-aminopropyl)-N-[-5-amino-2-[N,N-bis(2-aminoethyl)amino]valeryl]amino, N-(3-aminopropyl)-N-[-5-amino-2-[N-(3-aminopropyl)amino]valeryl]amino, N-(2-aminoethyl)-N-[-5-amino-2-[N,N-bis(2-aminoethyl)amino]valeryl]amino or ornityl-ornitylamino;

R² is hydrogen or methyl;

R³ is hydrogen or hydroxy;

or a pharmaceutically acceptable salt thereof.